

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE CONTRERAS,

Defendant.

No. 11-CR-168-LRR

ORDER

The matter before the court is the government’s “Motion to Strike” (“Motion”) (docket no. 70), which the government filed on December 9, 2012. In the Motion, the government requests that the court “strike the allegations contained in subparagraphs ‘a.’ of each of Counts I and II of the pending [I]ndictment [(docket no. 2)], alleged to be in violation of Title 8, United States Code, Section 1324(a)(1)(A)(ii).” Motion at 1. Defendant does not resist the Motion.

The Eighth Circuit Court of Appeals has stated:

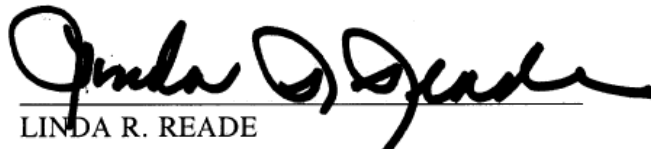
As a general rule, an indictment may not be amended. *See United States v. Burnett*, 582 F.2d 436, 438 (8th Cir. 1976) (citing *Ex parte Bain*, 121 U.S. 1, 7 S. Ct. 781, 30 L. Ed. 849 (1887)). The court may, however, amend an indictment by striking language that is “‘merely a matter of form,’” *id.* (quoting *Russell v. United States*, 369 U.S. 749, 770, 82 S. Ct. 1038, 8 L. Ed. 2d 240 (1962)), or where the language omitted is surplusage and nothing is thereby added to the indictment and the remaining allegations state the elements of an offense. *Id.* (citing *Salinger v. United States*, 272 U.S. 542, 548-549, 47 S. Ct. 173, 71 L. Ed. 398 (1926)).

United States v. Ross, 210 F.3d 916, 922 (8th Cir. 2000). In this case, the government requests that the court strike the allegation that Defendant did “transport and move, and aid and abet the transporting and moving of, the alien within the United States.”

Indictment at 1, 2. The court finds that such language is “surplusage” and “the remaining allegations [in the Indictment] state the elements of” a violation of 8 U.S.C. § 1324(a)(1)(A). *Ross*, 210 F.3d at 922. Accordingly, the Motion is **GRANTED**. Subparagraph “a,” alleging a violation of 8 U.S.C. § 1324(a)(1)(A)(ii), is **HEREBY STRICKEN** from each of Counts 1 and 2 of the Indictment.

IT IS SO ORDERED.

DATED this 10th day of December, 2012.



LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA